

Types of Strikes Regarding Industrial Disputes in India

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Abstract: *The strike is a weapon in the armoury of the middle class to fight collectively and to pressurize the employer. It is a weapon which is made use of by the labour class to safeguard their interests, both economic and cultural. However at times, the working class has abused this armoury to harass the employer as well. Hence, whether a strike should be identified as a right or not is a question worth debating. According to Ludwig Teller, the word strike in the broad significance has a reference to a dispute between an employer and his worker, in the course of which there is a concerted suspension of work. There are number of ways through which a strike can be conducted which has been elucidated in this article below.*

Keywords: *strike, workmen, employee, employer, industry, work, stoppage, cessation*

I. STRIKES - INTRODUCTION

The word strike is 100 years old. The first recorded phrase about, it was 'to strike work' is used in the year 1778. In 1867, the Royal commission on trade unions referred to workers having been fined for going to work in a shop that had been struck. In 1891, the world. Striking a firm made a note its metamorphosis in 1910, made the world strike, the most dreaded word in industrial corridors. The word strike sounded like a blacksmith's hammer, the woman's acts and the Patriots for ants till today has maintained its violent character Strike is supposed to be the ultimate weapon in the armoury of labour to fight y and to pressurise the managements. This weapon is used by the unions and the employees to save the their rights under labour legislations. Today, the right to strike is recognised as a legitimate right of the trade unions. The weapon of strike is mostly used by unions as the last major to ventilate their grievances, though some reckless unions resort to the weapon of strike much earlier, especially when it is not warranted to do so.

In modern times strike is not something which is to be resorted, day in and day out. The modern unions and managements are of the view that the production of an establishment must not be hampered and various means and measures are worked out to see that there is no strike happening in any industry, unless it is very necessary to hold it. There is an element of caution present in every strike when an attempt is made to pressurise the management to negotiate and settle the issues at hand.

The strike is defined in Section 2(q) of the Industrial Disputes Act 1947. It reads as follows: Section 2(q) of said Industrial Disputes Act 1947Act defines the term strike¹.

II. THEORETICAL BACKGROUND

Strikes of various types. Some of them are enumerated below :

1. General strike

The general strike is one where the workmen come together under a common understanding and stay away from work emitting the employer where heavy costs in the process as the work is brought to a standstill. General strikes are resorted to for securing economic demands like improvement in the matters of basic pay, bonuses, leaves and holidays etc. Such strikes are common in the Railways, Post and Telegraph Department and also by government employees.

2. Mass casual leave

Mass casual leave is another way adopted by the workers to ventilate their grievances, where all the workers go on leave at the same time, in negation of what is stated in the standing orders. The employees have a right to avail leave only in accordance with the standing orders, but this sort of a strike is resorted to by workers so that the management is pressurised to talk to them and settle their demands.

3. Stay in, sit down, pen down strikes

In the strikes, the worker centre the place of work, but do not work. They also do not believe their place of work. In these forms of strike the entry of the workers. Is legal, when they refused to leave the place of work. There squatting on the premises, constitutes, friends, as there is an element of a criminal trespass present in the same. When strikes are basically staged in banks, wherein the purpose. Many a times is to shake the credit of the bank in the market. If such strikes are continued for a long period, it certainly affects the repute of the employers and the market and such strikes sometimes lead to untoward incidences.

It was held in *Bank Of India v. T S Kelavala*², wherein J Sawant observed that , The helpless labour have waged a relentless battles against mighty managements.

Even the industrial legislation is recognise the right to strike, but it is to be seen that the various legislations also have circumscribed the right to strike by the workers and is laid down conditions when the strike would be a legal one. Illegal strike may not result in to any disciplinary action, but however, if at all the strike is to be an illegal one the

Revised Manuscript Received on September 16, 2019.

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Retrieval Number A0363094119/2019©BEIESP
DOI: 10.35940/ijmh.A0363.094119
Journal Website: www.ijmh.org

¹ "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment.

² 1990 SCR (3) 214

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workers are liable to lose their wages for the strike period, whatsoever, duration, it may be.

The losing of the wages is a by product of the holding of the strike because during the period of strikes the workers withhold their labour, and if at all they withhold their labour, that is, they do not work, there is no question for the employer to pay them for the said period for which they have not worked at all. The workers. Thus legitimately cannot expect that there have to be paid for the period of strike.

4. Go slow

Go slow in the form of strike wherein there is a deliberate delaying of production by the workmen pretending to be engaged in working. It is one of the most pernicious practices which are discontented and disgruntled workers sometimes resort to. This is nothing less than being dishonest because by going slow. In such strikes, there is a delayed production, reduced output and many a times the machineries also kept going on a reduced speed which is extremely damaging to the machinery parts. The workers remain entitled to full wages and other emoluments, as well as conditions of service, which even otherwise are to flow through them, but at the same time, the managements do not get the quantum of production which is expected from the workers for the salaries which they get.

5. Token strike

The strikes are staged as a token of protest for some grievance which the worker's hammer. Such strikes many a times are of a small duration for a span, but they qualify to be a strike if at all. All the ingredients of the definition in section 2(q) are satisfied.

6. Lightning or quickly strikes

As the name suggests, the strikes are held in a flash of a second. And that is why they are called as lightning or quickly strikes. These strikes are staged all of a sudden and the thought behind it is to spread the message of an instant strike with all the workers. Normally, the workers, if at all they are to go on strike given notice and then carry the thought into an action, but here, the strikers first strike and then start to bargain. As there is no notice present in the strike, such strikes are illegal ex-facie.

7. Sympathetic strikes

Such strikes are staged to extend sympathies to some other union, who are really on strikes against the management and in such strikes the workers do not have some grievance of their own. It is just staged to extend their support to some other union. However, the workers fail to understand that in this sort of a strike. It is the managements who have. To pay the salary packets to workers who really do not have a grievance of their own, and thus such strikes are not at all justified, besides being illegal, as there is no satisfaction of all the other ingredients present in section 2(q) of the Industrial Disputes Act 1947.

8. Hunger strike

Hunger strike in the strike were by the workmen resorting to this site of a strike refrain from having food and also stop from working. The hunger strike of Mahatma Gandhi was called as 'satyagrah' merits goal was to secure the ends of truth. The hunger strike by strikers is just the restraint imposed from having food where the goal to be achieved is a monetary one. The hunger striker is also liable under section 309 of the Indian Penal Code, which is an attempt to commit suicide. It is not that every strike will incur a

penalty. However, the stage reached by the strikers should be such a stage where there is a certainty of a suicide and only then would section 309, Indian Penal Code come into picture. Section 309³ of the Indian Penal Code deals with attempt to commit suicides.

9. Work to rule strike

This is a new form of a strike which is resorted to by the disgruntled workmen to circumvent the provisions of law governing their service conditions. The striking employees here added to the service rules in such a fashion that it causes harassment to the general public. The striking employees do not usually added to the rules in such a manner which they do it in this form of a strike. A minute of the ones of the rules causes harassment rather than helping the general public, and which also results down in slowing the momentum of work. Such strikes are usually staged in public utility services where the object is to harass the public in an indirect manner so that the government is pressurised to succumb to the demands of the workmen.

10. Mass resignations

Mass resignations is another form of a strike wherein all the workmen who are employed in an industry submit their resignations to the management. It becomes cumbersome and difficult for the management to accept every worker's resignation as that would have an effect of bringing the very industry to a standstill. The pressure which is exerted by the workers. By giving a mass resignation is basically to make the management agree to their demands and the standpoint of view

11. Gherao

Gherao is a word of vernacular origin and is synonymous with the idea of confining a person to the place from where he is not allowed to move in any manner. It is said to be a physical blockade of a target, who could be any manager, the managing director for anybody from the management. Here the victim is encircled by the workers to block the ingress and egress from a particular place, workshop or even a factory. The blockade subjected to by the workers very partial or may be total. There is an element of wrongful restraint and wrongful confinement is present in this form of a strike. Sometimes a gherao, takes an ugly turn wherein the victim is subjected to cruel and inhuman confinement, and that too without basic amenities such as the laxity and fans. Sometimes the rectum is also not given food or is restrained from communicating with the outside world. Rarely they are beaten and humiliated by abused and even not allowed to answer calls of nature. The victim is totally at the mercy of the besiegers. In this form of a strike, there is a wanton disregard of the law. It was held in, Jay Engineering Works Ltd.

And ... vs State Of West Bengal And Ors⁴, where the source of the word 'gherao' was discussed in the above-mentioned judgement, wherein the honourable judges stated that the word 'gherao' can be found in some Bengali dictionaries. It is derived from the hindi word 'ghirao' or

³ Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

⁴ AIR 1968 Cal 407

even from the Sanskrit word 'ghiri' which also means. -- "to cover or to encircle". The word 'gherao' also finds a place in the "Biswakosh". In the Sanskrit-English Dictionary, Dr.

Monier Williams, Boden, stated that the word "ghar" (gharayatiyitam) means "to cover". In Wilson's Glossary of Legal Terms, "gher" or "ghero" or "gherna" are Persian words which mean "to surround encircle fence or to bind a hedge."

In simple words 'gherao' means encirclement of a target where the one targeted is not allowed to move in any direction

III. FINDINGS

The right to strike is not an unbridled right as the Constitution of India does not recognise the right to strike as a fundamental right. What is stated in article 19(1) of the Constitution of India's right to form an association and not a right to strike. However, it is to be borne in mind that, prior to 1926, there were no trade unions in India, and thus, the trade union activities could easily be hampered by unscrupulous managements. It is only with the incoming of the trade unions act, 1926. The right to strike was conferred on the trade unions, which otherwise was treated as a breach of Common Law. The right to strike, however, is not an unbridled right, but is only suggest the statute. It has been made clear by the honourable Supreme Court that, there is no fundamental right to strike. The right to strike can be reined in by the government. The said provisions can be seen in a section 10 of The Industrial Disputes Act 1947⁵.

Section 10 (3)⁶ deals with the prohibition.

There is also a difference between an illegal strike and an unjustified strike. An illegal strike is one which is mentioned in section 24 of the Industrial Disputes Act 1947. An illegal strike is not at all justified though there may be instances where a strike, though legal, was unjustified for reasons to be recorded. It was held in one of the cases that something, which is basically legal cannot be said to be justified. Provocation may mitigate or it may estimate, but it practically never justifies contravention of the law was commented upon by Justice Aiyar, in, Indian General Navigation And Railway Co. Ltd v. Their Workmen⁷

⁵ Section 10
Section 10 (3) Where an industrial dispute has been referred to a Board,⁶⁸[Labor Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.
Section 10A [(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which maybe in existence on the date of the reference.]

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⁷ (1960 I, LL J 13)

IV. RESULTS AND DISCUSSION

Justice Shetty and Ahmadi JJ , of the the Hon'ble Supreme Court commented upon the issue in the case of B.R. Singh v. Union of India⁸, that , there is no fundamental right to strike. However, the right to form an association by the unions can be found in under Article 19(1)(c) of the Constitution of India. If the trade unions act, 1926 SC, it can be observed that section 8 of the trade unions act, 1926, provides for registration of trade unions. The right to form an association was recognised only to confer certain rights on trade unions. The formation of trade unions was necessary for regulating the grievances of the workmen as well as raising demands with the managements. Trade unionists are the spokesperson of the labour and the strength of any union is determined by the membership. It folds. The more the membership more. The union as a bargaining power to deal with the managements. The very bargaining power of the unions would be reduced if at all they are not allowed to express her way of demonstrations. According to Supreme Court strike in any given situation forms only way of demonstration and there could be different strikes are enshrined in the article above. No doubt strike is the last weapon in the armoury of labour, and is also recognised as a legitimate weapon in all democratic countries, though it may not be a fundamental right, undoubtedly) is as redress and mode for solving the problems of the workers. The right to strike, however, is not an absolute one and some restrictions on the put upon it under the provisions of the Industrial Disputes Act, 1947.

V. CONCLUSION

Merely because the workers have indulged into a strike it does not end and extinguish the employer-employee relationship, even though the strike is illegal. There is no severance of the master and servant relationship. The participation in an illegal strike, would amount to misconduct and may invoke disciplinary proceedings and the concerned employee will continue to be in service unless he is dismissed or discharged. In a strike, the workers do not work, and thus he need not be paid. The management is justified in deducting the wages of the workers if at all the indulged into a strike as during a strike, the master and servant relationship is kept in a state of limbo or suspension.

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⁸ (1989) 4 SCC 710]

AUTHORS PROFILE



Advocate Shrikant Malegaonkar, is a Science graduate where he stood 'First Class First', in the University of Poona. He later turned to Law, where he again stood 'First Class First', at L.L.B, in the University of Poona. He simultaneously pursued Management, while studying Law. He proceeded to England, where he delivered lectures at The London School of Economics, London, The School of Oriental and African Studies, London, at The University of Maiduguri, Nigeria, and at The Peoples Institute, Histadrut, Israel besides pursuing academics at the Berlitz School of Languages, Oxford Circus, London. He completed his Masters degree in Law (LL.M.) with flying colours and then started his practice at the Bar. He is recipient of the prestigious 'Setalvad Prize' from, The Bar Council of Maharashtra, Bombay. He started his practice in law in the year 1986. He earlier practised general law where he has conducted cases before the District Court, Family Courts, Cooperative Courts before he took up to specialisation in Labour Industrial Law. He runs his consultancy by name Industrial Relations Consultants. He is associated with numerous renowned public, private and government undertakings as their Advocate and Labour Management Consultant. He has recently authored a book by name "Personnel Management & Industrial Relations" along with Dr. P.C. Shejwalkar. He has been the content expert in a T.V. Serial on 'Domestic Enquiry', and has recently been awarded with the prestigious "Samajshree" award from The Indian Council of Management Executives, Bombay.